

### **REMARKS**

Applicant has amended claim 48 to more clearly define the present invention. Review, reconsideration and allowance of claims 48-111 are respectfully requested.

### **THE PRESENT INVENTION**

The present invention concerns a flashlight which comprises a light emitting diode having a first and second leads extending therefrom and a power source having a first side and a second side, the second side being opposite the first side. The flashlight further comprises a body enclosing the leads of the light emitting diode and the power source and a switch operable to close a circuit including the light source and the power source. The body of the flashlight has a frame made of a first material and at least one side cover made of a second different material. Further and significantly, the flashlight also comprises a clip, having means for opening such that an object may be attached to the flashlight or the flashlight may be attached to an object, disposed on an end of the body opposite the light emitting diode.

### **THE CITED ART, SPECIFICALLY THE KUO REFERENCE**

The Office Action has rejected claim 48-86 under 35 USC Section 103(a) as being unpatentable over Kuo (U.S. Patent No. 6,132,058) in view of Vanderbilt et al (U.S. Patent No. 5,463,539). The Office Action notes that Kuo discloses a flashlight having a number of parts that coincide with parts of the present invention, but also notes that body 30 has a frame 23 made of a first material and at least one side cover 20 made of a second different material. Applicant has made a careful study of the '058 patent and respectfully notes that the elements of Kuo are, as

defined in the patent, an upper shell 30 and a lower shell 20 (cols 2-3). No frame is defined and there is no teaching that the upper and lower shells are made of different materials. As the Office Action notes, however, there is a small window 201 in one of the shells, however a small window is not a side cover.

The Office Action particularly notes that Kuo does not disclose a flashlight having a clip disposed on an end of the body opposite the light emitting diode. Applicant agrees and notes that in Kuo the item "slot 204, 304" is simply a ring through which a key chain or key ring may be threaded. The Office Action notes that Vanderbelt et al. discloses a flashlight having a "clip 49" located at the end of the first and second side. Applicant has reviewed the specification of the '539 patent and notes that item number "49" is described as a "tab" and not a clip. Further, the specification discloses, at column 4, lines 32-36 that:

The outer sheath 14 also includes a tab 49 which can be looped and attached, such as sewn, between the peripheral edges 50 of the flaps 48, as seen in FIG. 2, in order to hang the flashlight 10 on a key chain C, as shown in dashed outline form in FIG.1.

#### **KUO AND VANDENBELT ET AL DO NOT TEACH THE USE OF A CLIP**

Applicant respectfully submits that the "looped tab 49" of the '539 patent is structurally identical to the "slot 204, 304" of the '058 patent. Looped tab 49 can not be opened so that an item can be attached to it, nor can it be used to attach the flashlight to an item – it is formed into a ring structure by virtue of its ends being sewn within the peripheral edges of the flaps. Clearly, neither the slot of Kuo nor the tab of Vanderbelt et al. is a clip as now claimed in the present application. As such, it would not have been obvious to a person having ordinary skill in the art to combine Kuo and Vanderbelt et al. to arrive at the present invention; and claim 48 should now be allowable.

Applicant respectfully agrees with the Office Action that, with respect to claims 49-86, Kuo in view of Vanderbelt et al. does not teach or suggest all of the different types of materials as cited in the claims of the present application regarding the frame and cover. Further, as claim 48 of the present invention has been shown not to be obvious in view of the cited patents, claims 49-86 should now also be allowable.

#### **DOUBLE PATENTING**

The Office Action has rejected claims 48-111 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the listed claims of U.S. Patent No. 6,749,317. Applicant encloses herewith a terminal disclaimer to obviate the non-statutory double rejection. A check to cover the fee for the terminal disclaimer is also enclosed herewith. If the enclosed fee is insufficient, or if it is determined that a further fee and/or a petition is required, the Commissioner is hereby authorized to charge any such fee to deposit account number 23-0920 and it is respectfully requested that this paper be considered as the required, or necessary, petition.

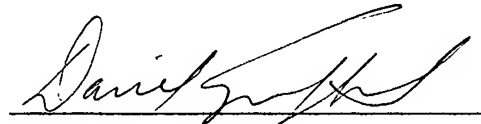
The Commissioner is hereby authorized to charge any additional fee which may be required for this application under 37 C.F.R. §§ 1.16-1.18, including but not limited to the issue fee, or credit any overpayment, to Deposit Account No. 23-0920. Should no proper amount be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 23-0920. A duplicate copy of this sheet(s) is enclosed. Further, should any petition be required with respect to this reply and amendment, the Commissioner is respectfully requested to treat this paper as the necessary petition or petitions and to charge the petition fee(s) to the above

noted deposit account.

Applicant hereby respectfully requests reconsideration and continued examination. A sincere effort has been made to overcome the Action's rejections and to place the application in allowable condition. Applicant invites the Examiner to call Applicant's attorney to discuss any aspects of the invention that the Examiner may feel are not clear or which may require further discussion.

In view of the foregoing remarks and amendments, it is believed that the subject application is now in condition for allowance, and an early Notice of Allowance is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel M. Gurfinkel", written over a horizontal line.

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